

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
RICHARD VACCARIELLO on behalf of him- :
self and all others similarly situated, :
 : 08 CIV 5336 (CS)
Plaintiff, :
 :
- against - :
 :
XM SATELLITE RADIO INC., :
 :
Defendant. :
----- X

DECLARATION OF JOSEPH ZARELLA

1. I am Joseph Zarella. I was employed by XM Satellite Radio Inc. ("XM") as Executive Vice President of Business Operations from September 18, 2006 to August 20, 2008. I am currently the Group Vice President and Chief Services Officer for the merged XM/SIRIUS entity, Sirius XM Radio Inc.

2. I make this declaration based on my personal knowledge and the knowledge I have acquired since joining XM of XM's business and standard customer practices.

XM Radio Activation and Pre-Payment

3. A customer must activate his/her XM-compatible radio and create an XM account in order to receive the XM radio signal. Since at least late 2003, a customer could activate his/her radio and pay in advance for XM radio either through the internet (via XM's website) or by calling XM.

XM's Customer Records Regarding Richard Vaccariello

4. XM's customer records show that Richard Vaccariello, with a billing address of 287 Bowman Avenue, Purchase, New York 10577, received a three-month trial subscription, from January 21, 2004 to April 21, 2004, during which time XM radio was

provided to the XM-compatible radio pre-installed in the General Motors vehicle leased by Mr. Vaccariello.

5. At the expiration of his trial period, Mr. Vaccariello telephoned XM and pre-paid for one year of XM radio subscription.

6. On or about April 8, 2005, Mr. Vaccariello telephoned XM and pre-paid with his credit card for three additional years of XM radio. On May 9, 2008, XM terminated Mr. Vaccariello's subscription upon his request.

XM's Customer Agreement Supplied in Leased Cars

7. As noted, Richard Vaccariello first became an XM customer in 2004 when he leased a vehicle from General Motors that came pre-installed with an XM-compatible car radio.

8. XM's standard business practice since at least mid-2003 has been to require all automobile manufacturers who lease vehicles with pre-installed XM-compatible radios and provide an XM radio subscription trial period to place the XM Customer Agreement and information regarding XM's channel line-up in the glove box of each vehicle. Based on this XM business practice, Richard Vaccariello would have received a copy of the XM Customer Agreement in force in early 2004 with his leased vehicle.

9. Attached hereto at Exhibit 1 is a true and accurate copy of the Customer Agreement in force as of early 2004. I note the following provisions in the attached Agreement that clearly state the subscriber's subscription will continue indefinitely: § 4(c) ("You should report to XM and cancel your subscription if your XM Radio is lost, stolen, sold, transferred or otherwise removed from your possession without your permission. Otherwise you will continue to pay for the Service.") and § 6(a) ("The term of this Agreement is indefinite and Service will continue until cancelled.").

10. Since at least mid-2003 customers have also been able to view the Customer Agreement online at XM's website.

11. XM's Customer Agreement is amended from time to time, in part to take into account changes in the applicable law. However, the provisions relating to the indefinite duration of the XM subscription agreement, and the right to cancel that subscription at any time, have been in each and every version of XM's Customer Agreement since 2003.

12. Attached hereto are true and accurate copies of XM Customer Agreements dating from mid-2003 in which these XM policies were clearly stated: Exhibit 1 at §§ 1(a), 6(a), 6(b) (July 2003); Exhibit 2 at §§ 1(a), 6(a), 6(b) (February 2004); Exhibit 3 §§ 1(a), 6(a), 6(b) (June 2004); and Exhibit 4 at §§ 1(a), 8(a), 8(b) (August 2005).

13. During these periods, and at all times since at least mid-2003, each XM customer has had the right to cancel his/her subscription by requesting a cancellation, and where applicable receive a full refund for any unused portion of pre-paid charges.

XM's Notice of Continuation by Letter

14. All XM subscribers are offered various payment terms, including pre-payment terms at discounted charges.

15. XM's standard regular business practice is to send a computer-generated letter to a customer notifying him/her that his/her pre-paid period is nearing its end and that his/her XM subscription will automatically renew. Given the large number of XM subscribers (over nine million), it is necessary that such letters are generated by computer.

16. Pursuant to XM's standard business practice, at or around the 20th day of the month prior to the expiration of a subscriber's pre-paid period, XM's vendor (currently EU Services) generates and mails the letter via first-class U.S. mail. Renewal letters to all credit card account subscribers are mailed on the same day each month. Attached hereto as Exhibit 5 is

the Postage Statement for credit card account letters, showing that in the month of March 2008, they were mailed on March 24, 2008.

17. I have every reason to believe, based on XM's business records and the standard practice and office procedures that I have described above, that XM mailed a letter dated March 21, 2008 to Mr. Vaccariello at his billing address of 287 Bowman Avenue, Purchase, New York 10577, stating that his subscription would renew on April 3, 2008.

18. I understand that Mr. Vaccariello has raised questions regarding the authenticity of documents attached as exhibits to Anthony Dreyer's Declaration dated July 22, 2008. I have examined Mr. Dreyer's Declaration and the exhibits, and I confirm their accuracy and authenticity.

I declare under penalty of perjury that the foregoing is true and correct. Executed in New York, New York on September 2, 2008.



Joseph Zarella

EXHIBIT 1

XM SATELLITE RADIO CUSTOMER AGREEMENT

THIS AGREEMENT CONTAINS THE TERMS OF YOUR USE OF XM SATELLITE RADIO SERVICES. IF YOU DO NOT ACCEPT THESE TERMS, PLEASE NOTIFY US IMMEDIATELY AND WE WILL CANCEL YOUR SERVICE (OUR CONTACT INFORMATION IS AT THE END OF THIS AGREEMENT). IF YOU DO NOT CANCEL YOUR SERVICE WITHIN 3 DAYS OF INITIATION OF YOUR SERVICE AND INSTEAD CONTINUE TO RECEIVE YOUR SERVICE, IT WILL MEAN THAT YOU ACCEPT THESE TERMS AND THAT THEY WILL BE LEGALLY BINDING ON YOU.

Thank you for choosing XM Satellite Radio ("XM"). XM broadcasts satellite radio programming only within the 48 contiguous United States. To become an XM subscriber, you must be at least 18 years old. If you are not yet 18 years old, you may still use XM, but only if the account was created by your parent or guardian. This is your copy of the XM Satellite Radio Customer Agreement. Please keep it for your records.

CONTACTING XM SATELLITE RADIO:

You may contact us between the hours of 10:00 am and 11:00 pm Eastern Standard Time Monday through Saturday and 12:00 pm and 8:00 pm Eastern Standard Time, Sunday, by calling **1-800-852-9696**, or by writing to:

XM Satellite Radio Inc.
Attention: Listener Care
1500 Eckington Place, N.E.
Washington, D.C. 20002
 Listener Care Center email address: listenercare@xmradio.com
 Web site address: xmradio.com

1. OUR SERVICE.

a) Programming. The Service consists of 100 channels of music, news, talk, sports, children's and other entertainment, as well as certain premium channels available for an additional fee. XM reserves the right to change programming at any time and without notice, at our sole discretion, including canceling, moving or adding particular channels, with or without notice to you. If you are dissatisfied with the modified programming, you may cancel your Service with notice to XM as outlined in Section 6. Premium channels are only available in commercial establishments at XM's discretion.

b) Use Limitations. We provide the Service only for your personal, non-commercial enjoyment. You may not reproduce, rebroadcast, or otherwise transmit the programming, record the programming, charge admission specifically for the purpose of listening to the programming, or distribute play lists of the programming. Notwithstanding the provisions of Section 9, we or any of our programming partners may prosecute violations of the foregoing against you and other responsible parties in any court of competent jurisdiction, under the rules and regulations of the FCC, and other applicable laws. Subscription to the Service does not grant you the right to use any of our or our partners' trademarks.

c) User Safety. If you use the Service, it is your responsibility to exercise prudent discretion and observe all safety measures required by law and your own common sense. XM assumes no responsibility for accidents resulting from or associated with use of the Service. If your Service includes any weather information, you acknowledge that such information is not for "safety for life", but is merely supplemental and advisory in nature, and therefore cannot be relied upon as safety-critical in connection with any aircraft, seacraft or automobile usage. You assume the entire risk related to your use of weather information. This information is provided "as is" and XM disclaims any and all warranties, express and implied, with respect thereto or the transmission or reception thereof. In no event will XM, its data suppliers, service providers or hardware manufacturers be liable to you or to any third party for any direct, indirect, incidental, consequential, special, exemplary or punitive damages or lost profits resulting from use of or interruptions in the transmission or reception of such weather information.

d) Channel Blocking. Some programming may include explicit language. Channels with a high frequency of explicit language are indicated on your channel line-up and on the channel display with an "XL." These channels may not be appropriate for the patrons of a commercial establishment. If you use the Service in a commercial establishment, you must inform us promptly of any complaints you receive from any patron about the content of our Service. It is your responsibility to impose listening restrictions that you consider appropriate on others and for your patrons. Please contact our Listener Care Center (**1-800-852-9696**) or visit our Web site xmradio.com for information on channel blocking. We reserve the right to block any channels from a commercial establishment based on listener complaints, FCC inquiry, negative publicity, or similar factors.

2. CHANGE IN TERMS.

Due to the evolving nature of our business, its competition, and the requirement and costs of programming suppliers, we reserve the right to change the terms on which we offer the Service from time to time, as we believe appropriate, including the fees and charges. If we make any such changes, we will send you a notice describing them and their effective date, in the manner described in Section 10(a), or we will send you an entirely new Agreement to replace this Agreement. You always have the right to cancel the Service at any time if these terms are not acceptable to you. If you elect not to cancel your Service after receiving our notice of a change, your continued receipt of Service from us will constitute acceptance of the changed terms. If you notify us that you do not accept such terms, then we may cancel your Service as provided in Section 6.

3. SERVICE INTERRUPTIONS.

Service may be unavailable or interrupted from time to time for a variety of reasons, such as environmental or topographic conditions and other things we can't control. Service might also not be available in certain places (e.g., in tunnels, parking garages, or within or next to buildings) or near other technologies. Home, portable and office-based

receivers function best when the antenna is placed in or near a south-facing window with a clear view of the sky. Even if your antenna is near a south-facing window, certain window treatments could interfere with reception. We are not responsible for any interruptions of Service that occur beyond our control.

4. RADIOS.

a) Authorized Suppliers. We do not make or install any of the equipment you may use to receive the Service ("XM Radios"). We only provide the Service. You must purchase your XM Radio, and any repairs, parts, installation or service for it, from authorized sellers or manufacturers. We are not liable for any damage to your vehicle or home resulting from installation of any XM Radio. We do not warrant any XM Radios in any way whatsoever and are not responsible for the advertising, statements, practices, promises, services or warranties of such sellers or manufacturers. If you have any complaints about your Radio or your installation, you should direct them to your authorized seller, manufacturer or installer. Returns of XM Radios are subject to your authorized seller's or manufacturer's return policy.

b) Multiple XM Radios. If you add additional XM Radios to your account, you must purchase a separate subscription for each one (see Section 5). Such additional subscriptions may be eligible for reduced rates, which may be offered by XM from time to time.

c) Loss of Radio. You should report to XM and cancel your subscription if your XM Radio is lost, stolen, sold, transferred or otherwise removed from your possession without your permission. Otherwise you will continue to pay for the Service.

d) Technology. It is prohibited to copy, decompile, disassemble, reverse engineer or manipulate any technology incorporated in receivers compatible with the XM Satellite Radio system. Furthermore, the AMBE® voice compression software included in this product is protected by intellectual property rights including patent rights, copyrights, and trade secrets of Digital Voice Systems, Inc. The user of this or any other software contained in an XM Radio is explicitly prohibited from attempting to copy, decompile, reverse engineer, or disassemble the object code, or in any other way convert the object code into human-readable form. The software is licensed solely for use within this product.

5. PAYMENT.

In return for receiving our Service, you agree to pay us as follows:

a) Subscription Fee. You will pay in advance, preferably by credit card, at the applicable consumer or commercial rates in effect at the time of payment, for any Service ordered for use with your XM Radio (including Service ordered by your children or other family members), with or without your permission, through all periods until the Service is canceled. You will be responsible for all subscription fees, other charges and fees and purchases under your account. If you use XM in a commercial establishment, you are not responsible for the payment of any copyright royalties to ASCAP, BMI, SESAC or for any sound recordings, as these are includ-

ed in your subscription fee, unless you operate an establishment that charges an admissions fee (e.g. a theme park, skating rink, dance club, etc.), in which case you are responsible for payment of any copyright royalties to ASCAP, BMI, SESAC or for any sound recordings. Our subscription fees and other charges and fees are subject to change. Please do not include comments or questions with your payment. If paying against invoices, mail all payments to the following address:

**XM Satellite Radio Inc.
P. O. Box 79500
Baltimore, MD 21279-0500**

b) Billing Statements. If you elect to make automatic credit or charge card (i.e., Visa, MasterCard, American Express) or electronic funds payments, you will not receive monthly statements unless you request them. Statements are sent via electronic mail unless otherwise requested. Statements will show: (1) payments, credits, purchases, and any other charges to your account; (2) the amount you owe us, and; (3) the payment due date. If you are not using an electronic method of payment, we will send you a statement for the print billing payment cycle period available when subscribing. Statements are not sent with a zero or nominal balance due, or a nominal credit balance, on your account at the end of a billing cycle.

c) Administrative Fees. In order to minimize our monthly subscription fees, we may charge you one or more of the following fees, all of which are subject to change:

1. Activation Fee: For each XM Radio on your account, we may charge you a one-time fee to activate your XM Satellite Radio Service. The fee is payable with your first subscription fee payment.
2. Late Fee: If we do not receive your payment by the billing due date, we may charge you a late fee of up to \$5.00 per month or partial month until the delinquent amount is paid in full, subject to applicable law. We do not extend credit to customers and this late fee is not an interest charge. This fee is reasonably related to the actual expense we incur due to late payment and may be subject to limitations set forth by law in your state.
3. Check-by-Phone Fee: If you elect to pay any outstanding balance by the telephone check method, we may charge you a fee of up to \$5.50 per payment.
4. Deposits: If you wish to reactivate your Service after a deactivation for non-payment, you must pay your account in full and we may require a deposit before we reactivate your Service. Deposits will appear on your bills as credits, from which we will deduct our charges. Deposits will not earn interest.
5. Returned Payment Fee: If any bank or other financial institution refuses to honor any payment of yours, we may charge you a collection fee that is the lesser of (i) \$20.00 (\$15.00 for residents of West Virginia); and (ii) the maximum amount permitted under

applicable law. You acknowledge that this collection fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature and it is reasonably related to the actual expense we incur due to unsatisfied payment.

6. *Invoice Fee:* If you elect to receive a paper copy of your invoice, we may charge you a fee of up to \$2.00 per invoice.

d) Questions About Your Statement. If you have a question about your Service or bill, or if you would like to change or reactivate your Service, call us (1-800-852-9696) or write to listenercare@xmradio.com or to the address on the first page. We will respond to you as promptly as we can. If you write to us, please include the following information: (i) Your name and account number; (ii) The dollar amount in question; and (iii) The details of your question. Please do not include any payment with your correspondence. If you wish to dispute any charge, you must contact XM within 45 days after the date you receive the statement in question (see Section 9 "Resolving Disputes") for how to notify XM that you are disputing a charge); OTHERWISE YOU WAIVE YOUR RIGHT TO DISPUTE THE CHARGE. Undisputed portions of the statement must be paid by the due date to avoid a late fee and possible deactivation of the Service.

e) Payments. You must pay in U.S. dollars, by check, money order, electronic funds transfer, or credit card. Please make checks payable to XM Satellite Radio Inc. We reserve the right to require payment via cashier's check or money order regardless of credit rating or any past practice. The outstanding balance is due in full each payment period. We may, in our discretion, accept partial payments, which will be applied to the oldest outstanding statement. No "payment in full" notation or other restrictive endorsement written on your payments will restrict our ability to collect all amounts owing to us.

f) If You Don't Pay On Time. We expect you to pay your account balance on time. If you don't pay your account balance on time, we may deactivate your Service, after any applicable grace period. If you purchased an annual subscription to any Service and your account is past due, we may convert your subscription to a quarterly or monthly subscription. If so, we will prorate your subscription and amounts owed to us and will apply your pre-payments to past due amounts and any remaining credit to future obligations.

g) Consents Regarding Credit. In order to establish an account with us, you authorize us to inquire into your creditworthiness, by checking with credit reporting agencies. If you are delinquent in any payment to us, you also authorize us to report any late payment or nonpayment to credit reporting agencies.

h) Change of Address or Credit or Charge Card Information. You must notify us immediately of any change in your name, mailing address, residence address, e-mail address, telephone number or credit or charge card information.

i) Taxes. You will pay all taxes or other government fees and charges, if

any, which are assessed based on your use of the Service and the billing address you provide to XM.

6. CANCELLATION.

a) Term. The term of this Agreement is indefinite and Service will continue until canceled.

b) Your Cancellation. You may cancel Service by notifying us. This notice will become effective at the end of your billing cycle. You are responsible for payment of all outstanding balances accrued through that effective date. We (or the creditor or lessor of your vehicle, if your Subscription Fee is included in the amount financed or leased) will refund amounts you may have prepaid on a quarterly or annual basis representing those months beyond the billing cycle month during which you cancelled your service. Fees attributable to certain promotional offerings or Service received during trial periods may not be refunded. Service credits will not be refunded in cash, but will be honored in the form of Service for the remaining length of the credit.

c) Our Cancellation. We may cancel your Service at any time if you fail to pay amounts owing to us when due, subject to any grace periods, breach of any other material provision of this Agreement or for any other reason. In such case, you will still be responsible for payment of all outstanding balances accrued through that effective date.

7. CUSTOMER LIST.

You acknowledge and agree that we will have the right to make portions of our customer list available to carefully selected third parties that we believe offer products and services that may be of interest to you. However, if you prefer that we not provide your information to third parties, please contact us at **1-800-852-9696**. Notwithstanding the foregoing, we reserve the right to inform ASCAP, BMI, SESAC, and any other music royalty collection organization of your subscription for the purposes of confirming to them that you are not responsible for the payment of music royalties.

8. LIMITS ON OUR RESPONSIBILITY.

a) DISCLAIMERS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE SERVICE OR YOUR XM RADIO. ALL SUCH WARRANTIES OR REPRESENTATIONS (INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT) ARE HEREBY DISCLAIMED.

b) LIMITATIONS OF LIABILITY. WE ARE NOT RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOSSES RELATING TO THE USE OR PURCHASE OF ANY XM RADIO OR THE SERVICE, WHETHER BASED ON NEGLIGENCE OR OTHERWISE. OUR TOTAL LIABILITY TO YOU AND ANY OTHER PERSONS RECEIVING OUR SERVICE, REGARDLESS OF THE CAUSE, WILL IN NO EVENT

EXCEED THE AMOUNTS THAT YOU HAVE PAID TO US FOR THE SERVICE THAT YOU RECEIVED DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE SPECIFIC EVENT THAT GAVE RISE TO THE APPLICABLE DAMAGE OR LOSS. THIS ALLOCATION OF RISK IS REFLECTED IN OUR PRICES. YOU MAY HAVE GREATER RIGHTS THAN DESCRIBED ABOVE UNDER YOUR STATE'S LAWS.

9. RESOLVING DISPUTES.

In order to expedite and control the cost of disputes, you agree that any legal or equitable claim relating to this Agreement, or the Service (referred to as a "Claim") will be resolved as follows:

a) Informal Resolution. We will first try to resolve any Claim informally. Accordingly, neither of us may start a formal proceeding (except for Claims described in Section 9(c)) for at least 60 days after one of us notifies the other of a Claim in writing. To initiate a Claim, you must send notice to the address on the first page of this Agreement. If XM initiates a Claim, we will send our notice to the billing address on file with us.

b) Formal Resolution. Except as provided in Section 9(c), if we cannot resolve a Claim informally, any Claim either of us asserts will be resolved only by binding arbitration. The arbitration will be conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules") that are in effect at the time the arbitration is initiated and under the rules set forth in this Agreement. If there is a conflict between the AAA Rules and the rules set forth in this Agreement, the rules set forth in this Agreement will govern. ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JURY TRIAL. If you initiate an arbitration, you agree to pay a fee of \$125 or, if less and you tell us in writing, the amount that you would pay to initiate a lawsuit against us in the appropriate court of your state. We agree to pay any additional fee or deposit required by the American Arbitration Association in excess of your filing fee. We also agree to pay the costs of the arbitration proceeding up to a maximum of one-half day (four hours) of hearings. Other fees, such as attorney's fees, expenses or travel to the arbitration and the costs of a proceeding that goes beyond one-half day will be with AAA rules. The arbitration will be held at a location within 100 miles of your residence unless you and we both agree to another location. To start the arbitration, you or we must do the following things: (i) Write a demand for arbitration. The demand must include a description of the Claim and the amount sought to be recovered; (ii) Send three copies of the demand for arbitration plus the appropriate filing fee to: American Arbitration Association, 601 Pennsylvania Avenue, N.W., Suite 700, Washington, D.C. 20004; (iii) Send one copy of the demand for arbitration to XM SATELLITE RADIO INC. In the arbitration proceeding, the arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so. Otherwise, the arbitrator's decision is final and binding on all parties and may be enforced in any federal or state court that has jurisdiction. A court may sever any portion of this Section 9 that it finds to be unenforceable.

c) Exceptions. Notwithstanding the foregoing: (i) any dispute over the validity of either party's intellectual property rights or our licenses to operate our business; (ii) any Claim based on Section 9(b) above, and; (iii) any dispute involving a violation of the Communications Act of 1934, 47 U.S.C. §605, or the Electronic Communications Privacy Act, 18 U.S.C. §§2510-2521, may be decided only by a court of competent jurisdiction. Nothing in this Agreement shall affect our ability to terminate your Service for non-payment of amounts owed to us when due. Furthermore, nothing in this Agreement will prevent us from bringing an action in a court of competent jurisdiction in order to collect any unpaid amounts.

10. MISCELLANEOUS.

a) Notice. Notices to you will be deemed given when deposited in the mail or on the date that an e-mail is sent. Mailed notices may be included in our statements or emails to you. We may also provide notice to you by telephone, which will be deemed given when a message is left with you or someone answering the telephone at your residence or commercial establishment. Your notices to us will be deemed given when we receive them at the address (regular or e-mail) or telephone number set forth on the first page of this Agreement.

b) Applicable Law. The interpretation and enforcement of this Agreement shall be governed by the rules and regulations of the Federal Communications Commission, other applicable federal laws, and the laws of the state and local area where Service is provided to you. This Agreement is subject to modification if required by such laws. Notwithstanding the foregoing, Section 9 shall be governed by the Federal Arbitration Act.

c) Assignment of Account or Agreement. We may assign your account or this Agreement and all rights and/or obligations hereunder to any third party without notice for any purpose, including without limitation collection of unpaid amounts, in the event of an acquisition, corporate reorganization, merger or sale of substantially all of the party's assets to another entity. You hereby consent to such assignment. You must continue making all required payments to us in accordance with your billing statement, unless notified otherwise.

d) Other. This Agreement states our entire agreement. No salesperson or other representative is authorized to change it for you, although XM may modify it without prior notice to you (see Section 2). If any provision is declared by a competent authority to be invalid, that provision will be deleted or modified to the extent necessary, and the rest of this Agreement will remain enforceable. The specific terms of this Agreement that expressly, or by their nature, survive termination shall continue thereafter until fully performed.



THANK YOU FOR CHOOSING XM SATELLITE RADIO.

©2001-2003 XM Satellite Radio Inc. "XM" and related marks are trademarks of XM Satellite Radio Inc.



CUSTOMER AGREEMENT

EXHIBIT 2

THIS AGREEMENT CONTAINS THE TERMS OF YOUR USE OF XM SATELLITE RADIO SERVICES. IF YOU DO NOT ACCEPT THESE TERMS, PLEASE NOTIFY US IMMEDIATELY AND WE WILL CANCEL YOUR SERVICE (OUR CONTACT INFORMATION IS LISTED BELOW). IF YOU DO NOT CANCEL YOUR SERVICE WITHIN 3 DAYS OF INITIATION OF YOUR SERVICE AND INSTEAD CONTINUE TO RECEIVE YOUR SERVICE, IT WILL MEAN THAT YOU ACCEPT THESE TERMS AND THAT THEY WILL BE LEGALLY BINDING ON YOU.

Thank you for choosing XM Satellite Radio ("XM"). XM broadcasts satellite radio programming only within the 48 contiguous United States. To become an XM subscriber, you must be at least 18 years old. If you are not yet 18 years old, you may still use XM, but only if the account was created by your parent or guardian. This is your copy of the XM Satellite Radio Customer Agreement. Please keep it for your records.

CONTACTING XM SATELLITE RADIO:

You may contact us between the hours of 10:00 am and 11:00 pm Eastern Standard Time Monday through Saturday and 12:00 pm and 8:00 pm Eastern Standard Time, Sunday, by calling **1-800-XM-RADIO** (1-800-967-2346), or by writing to:

XM Satellite Radio Inc.
Attention: Listener Care
1500 Eckington Place, N.E.
Washington, D.C. 20002
 Listener Care Center email address: listenercare@xmradio.com
 Website address: www.xmradio.com

1. OUR SERVICE

a) Programming. The Service consists of 100 channels of music, news, talk, sports, children's and other entertainment, as well as certain premium channels available for an additional fee. In addition, XM will add 21 channels of traffic and weather in 2004. XM reserves the right to change programming at any time and without notice, at our sole discretion, including canceling, moving or adding particular channels, with or without notice to you. If you are dissatisfied with the modified programming, you may terminate your service with notice to XM as outlined in Section 6. Premium channels are only available in commercial establishments at XM's discretion.

b) Use Limitations. You may not reproduce, rebroadcast, or otherwise transmit the programming, record the programming, charge admission specifically for the purpose of listening to the programming, or distribute play lists of the programming. Notwithstanding the provisions of Section 9, we or any of our programming partners may prosecute violations of the foregoing against you and other responsible parties in any court of competent jurisdiction, under the rules and regulations of the FCC, and other applicable laws. Subscription to the Service does not grant you the right to use any of our or our partners' trademarks.

c) User Safety. If you use the Service it is your responsibility to exercise prudent discretion and observe all safety measures required by law and your own common sense. XM assumes no responsibility for accidents resulting from or associated with use of the Service. Your

Service includes traffic and weather information, and you acknowledge that such information is not for "safety for life", but is merely supplemental and advisory in nature, and therefore cannot be relied upon as safety-critical in connection with any aircraft, seacraft or automobile usage. You assume the entire risk related to your use of traffic and weather information. This information is provided "as is" and XM disclaims any and all warranties, express and implied, with respect thereto or the transmission or reception thereof. In no event will XM, its data suppliers, service providers or hardware manufacturers be liable to you or to any third party for any direct, indirect, incidental, consequential, special, exemplary or punitive damages or lost profits resulting from use of or interruptions in the transmission or reception of such traffic and weather information. XM further does not warrant the accuracy, reliability, completeness or timeliness of the traffic and weather information disclosed on the Service.

d) Channel Blocking. Some programming may include explicit language. Channels with a high frequency of explicit language are indicated on your channel line-up and on the channel display with an "XL." It is your responsibility to impose listening restrictions that you consider appropriate on others. Please contact our Listener Care Center **1-800-XM-RADIO** (1-800-967-2346), or visit our website xmradio.com for information on channel blocking.

e) Commercial Subscribers.

1. In addition to the other terms of this Agreement, this paragraph applies if you use the Service in a commercial establishment. Channels with a high frequency of explicit language are indicated on your channel line-up and on the channel display with an "XL." These channels may not be appropriate for the patrons of a commercial establishment. If you use the Service in a commercial establishment, you must inform us promptly of any complaints you receive from any patron about the content of our Service. It is your responsibility to impose listening restrictions that you consider appropriate on others and for your patrons. Please contact our Listener Care Center **1-888-689-2300** or visit our website xmradio.com for information on channel blocking. We reserve the right to block any channels from a commercial establishment based on listener complaints, FCC inquiry, negative publicity, or similar factors.

2. If you use XM in a commercial establishment, you are not responsible for the payment of any copyright royalties to ASCAP, BMI, SESAC or for any sound recordings, as these are included in your subscription fee, unless you operate an establishment that charges an admissions fee (e.g. a theme park, skating rink, dance club, etc.), in which case you are responsible for payment of any copyright royalties to ASCAP, BMI, SESAC or for any sound recordings. Our subscription fees and other charges and fees are subject to change. Please do not include comments or questions with your payment. If paying against invoices, mail all payments to the following address:

XM Satellite Radio Inc.
P. O. Box 79500
Baltimore, MD 21279-0500

2. CHANGE IN TERMS.

Due to the evolving nature of our business, its competition, and the requirement and costs of programming suppliers, we reserve the right to change the terms on which we offer the Service from time to time, as we believe appropriate, including the fees and charges. If we make any such changes, we will send you a notice describing them and their effective date, in the manner described in Section 10(a), or we will send you an entirely new Agreement to replace this Agreement. You always have the right to cancel the Service at any time if these terms are not acceptable to you. If you elect not to cancel your Service after receiving our notice of a change, your continued receipt of Service from us will constitute acceptance of the changed terms. If you notify us that you do not accept such terms, then we may cancel your Service as provided in Section 6.

3. SERVICE INTERRUPTIONS.

Service may be unavailable or interrupted from time to time for a variety of reasons, such as environmental or topographic conditions and other things we can't control. Service might also not be available in certain places (e.g., in tunnels, parking garages, or within or next to buildings) or near other technologies. Home, portable and office-based receivers function best when the antenna is placed in or near a south-facing window with a clear view of the sky. Even if your antenna is near a south-facing window, certain window treatments could interfere with reception. We are not responsible for any interruptions of Service that occur beyond our control.

4. RADIOS.

a) Authorized Suppliers. We do not make or install any of the equipment you may use to receive the Service ("XM Radios"). We only provide the Service. You must purchase your XM Radio, and any repairs, parts, installation or service for it, from authorized sellers or manufacturers. We are not liable for any damage to your vehicle or home resulting from installation of any XM Radio. We do not warrant any XM Radios in any way whatsoever and are not responsible for the advertising, statements, practices, promises, services or warranties of such sellers or manufacturers. If you have any complaints about your Radio or your installation, you should direct them to your authorized seller, manufacturer or installer. Returns of XM Radios are subject to your authorized seller's or manufacturer's return policy.

b) Multiple XM Radios. If you add additional XM Radios to your account, you must purchase a separate subscription for each one (see Section 5). Such additional subscriptions may be eligible for reduced rates, which may be offered by XM from time to time.

c) Loss of Radio. You should report to XM and cancel your subscription if your XM Radio is lost, stolen, sold, transferred or otherwise

removed from your possession without your permission. Otherwise you will continue to pay for the Service.

d) Technology. It is prohibited to copy, decompile, disassemble, reverse engineer or manipulate any technology incorporated in receivers compatible with the XM Satellite Radio system. Furthermore, the AMBE® voice compression software included in this product is protected by intellectual property rights including patent rights, copyrights, and trade secrets of Digital Voice Systems, Inc. The user of this or any other software contained in an XM Radio is explicitly prohibited from attempting to copy, decompile, reverse engineer, or disassemble the object code, or in any other way convert the object code into human-readable form. The software is licensed solely for use within this product.

5. PAYMENT.

In return for receiving our Service, you agree to pay us as follows:

a) Subscription Fee. You will pay in advance, preferably by credit card, at the applicable consumer or commercial rates in effect at the time of payment, for any Service ordered for use with your XM Radio (including Service ordered by your children or other family members), with or without your permission, through all periods until the Service is canceled. You will be responsible for all subscription fees, other charges and fees and purchases under your account. Our subscription fees and other charges and fees are subject to change. Please do not include comments or questions with your payment. If paying against invoices, mail all payments to the following address:

XM Satellite Radio Inc.
P. O. Box 79500
Baltimore, MD 21279-0500

b) Billing Statements. If you elect to make automatic credit or charge card (i.e., Visa, MasterCard, American Express) or electronic funds payments, you will not receive monthly statements unless you request them. Statements are sent via electronic mail unless otherwise requested. Statements will show:

- (1) payments, credits, purchases, and any other charges to your account;
- (2) the amount you owe us; and
- (3) the payment due date.

If you are not using an electronic method of payment, we will send you a statement for the print billing payment cycle period available when subscribing. Statements are not sent with a zero or nominal balance due, or a nominal credit balance, on your account at the end of a billing cycle.

c) Administrative Fees. In order to minimize our monthly subscription fees, we may charge you one or more of the following fees, all of which are subject to change:

1. Activation Fee: For each XM Radio on your account, we may

charge you a fee to activate, upgrade or modify your XM Satellite Radio service. The addition of premium channels may require an additional transaction fee. The fee is payable with your first subscription fee payment.

2. *Late Fee:* If we do not receive your payment by the billing due date we may charge you a late fee of up to \$5.00 per month or partial month until the delinquent amount is paid in full, subject to applicable law. We do not extend credit to customers and this late fee is not an interest charge. This fee is reasonably related to the actual expense we incur due to late payment and may be subject to limitations set forth by law in your state.
3. *Deposits:* If you wish to reactivate your Service after a deactivation for non-payment, you must pay your account in full and we may require a deposit before we reactivate your Service. Deposits will appear on your bills as credits, from which we will deduct our charges. Deposits will not earn interest.
4. *Returned Payment Fee:* If any bank or other financial institution refuses to honor any payment of yours, we may charge you a collection fee that is the lesser of (i) \$20.00 (\$15.00 for residents of West Virginia); and (ii) the maximum amount permitted under applicable law. You acknowledge that this collection fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature and it is reasonably related to the actual expense we incur due to unsatisfied payment.
5. *Invoice Fee:* If you elect to receive a paper copy of your invoice, we may charge you a fee of up to \$2.00 per invoice.

d) Questions About Your Statement. If you have a question about your Service or bill, or if you would like to change or reactivate your Service, call us **1-800-XM-RADIO** (1-800-967-2346), or write to **listenercare@xmradio.com** or regular mail at the address on the first page. We will respond to you as promptly as we can. If you write to us, please include the following information:

- Your name and account number;
- The dollar amount in question; and
- The details of your question.

Please do not include any payment with your correspondence. If you wish to dispute any charge, you must contact XM within 30 days after the date you receive the statement in question (see Section 9 "Resolving Disputes" for how to notify XM that you are disputing a charge): OTHERWISE YOU WAIVE YOUR RIGHT TO DISPUTE THE CHARGE. Undisputed portions of the statement must be paid by the due date to avoid a late fee and possible deactivation of the Service.

e) Payments. You must pay in U.S. dollars, by check, money order, electronic funds transfer, or credit card. Please make checks payable to XM Satellite Radio Inc. We reserve the right to require payment via cashier's check or money order regardless of credit rating or any past

practice. The outstanding balance is due in full each payment period. We may, in our discretion, accept partial payments, which will be applied to the oldest outstanding statement. No "payment in full" notation or other restrictive endorsement written on your payments will restrict our ability to collect all amounts owing to us.

f) If You Don't Pay On Time. We expect you to pay your account balance on time. If you don't pay your account balance on time, we may deactivate your Service after any applicable grace period. If you purchased an annual subscription to any Service and your account is past due, we may convert your subscription to a quarterly or monthly subscription. If so, we will prorate your subscription and amounts owed to us and will apply your pre-payments to past due amounts and any remaining credit to future obligations.

g) Consents Regarding Credit. In order to establish an account with us, you authorize us to inquire into your creditworthiness, by checking with credit reporting agencies. If you are delinquent in any payment to us, you also authorize us to report any late payment or non-payment to credit reporting agencies.

h) Change of Address or Credit or Charge Card Information. You must notify us immediately of any change in your name, mailing address, residence address, email address, telephone number or credit or charge card information.

i) Taxes. You will pay all taxes or other government fees and charges, if any, which are assessed based on your use of the Service and the billing address you provide to XM.

6. CANCELLATION

a) Term. The term of this Agreement is indefinite and Service will continue until canceled.

b) Your Cancellation. You may cancel Service by notifying us. This notice will become effective at the end of your billing cycle. You are responsible for payment of all outstanding balances accrued through that effective date. We (or the creditor or lessor of your vehicle, if your Subscription Fee is included in the amount financed or leased) will refund amounts you may have prepaid on a quarterly, annual or multi-year basis representing those months beyond the billing cycle month during which you cancelled your service. Fees attributable to certain promotional offerings or Service received during trial periods may not be refunded. Service credits will not be refunded in cash, but will be honored in the form of Service for the remaining length of the credit.

c) Our Cancellation. We may cancel your Service at any time if you fail to pay amounts owing to us when due, subject to any grace periods, breach of any other material provision of this Agreement or for any other reason. In such case, you will still be responsible for payment of all outstanding balances accrued through that effective date.

7. CUSTOMER LIST.

You acknowledge and agree that we will have the right to make por-

tions of our customer list available to carefully selected third parties that we believe offer products and services that may be of interest to you. However, if you prefer that we not provide your information to third parties, please contact us at **1-800-XM-RADIO** (1-800-967-2346). Notwithstanding the foregoing, we reserve the right to inform ASCAP, BMI, SESAC, and any other music royalty collection organization of your subscription for the purposes of confirming to them that you are not responsible for the payment of music royalties.

8. LIMITS ON OUR RESPONSIBILITY

a) DISCLAIMERS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE SERVICE OR YOUR XM RADIO. ALL SUCH WARRANTIES OR REPRESENTATIONS (INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT) ARE HEREBY DISCLAIMED.

b) LIMITATIONS OF LIABILITY. WE ARE NOT RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOSSES RELATING TO THE USE OR PURCHASE OF ANY XM RADIO OR THE SERVICE, WHETHER BASED ON NEGLIGENCE OR OTHERWISE. OUR TOTAL LIABILITY TO YOU AND ANY OTHER PERSONS RECEIVING OUR SERVICE, REGARDLESS OF THE CAUSE, WILL IN NO EVENT EXCEED THE AMOUNTS THAT YOU HAVE PAID TO US FOR THE SERVICE THAT YOU RECEIVED DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE SPECIFIC EVENT THAT GAVE RISE TO THE APPLICABLE DAMAGE OR LOSS. THIS ALLOCATION OF RISK IS REFLECTED IN OUR PRICES. YOU MAY HAVE GREATER RIGHTS THAN DESCRIBED ABOVE UNDER YOUR STATE'S LAWS.

9. RESOLVING DISPUTES.

In order to expedite and control the cost of disputes, you agree that any legal or equitable claim relating to this Agreement, or the Service (referred to as a "Claim") will be resolved as follows:

a) Informal Resolution. We will first try to resolve any Claim informally. Accordingly, neither of us may start a formal proceeding (except for Claims described in Section 9(c)) for at least 60 days after one of us notifies the other of a Claim in writing. To initiate a claim, you must send notice to the address on the first page of this Agreement. If XM initiates a claim, we will send our notice to the billing address on file with us.

b) Formal Resolution. Except as provided in Section 9(c), if we cannot resolve a Claim informally, any Claim either of us asserts will be resolved only by binding arbitration. The arbitration will be conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules") that are in effect at the time the arbitration is initiated and under the rules set forth in this Agreement. If there is a conflict between the AAA Rules and the rules set forth in

this Agreement, the rules set forth in this Agreement will govern. ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JURY TRIAL. If you initiate an arbitration, you agree to pay a fee of \$125 or, if less and you tell us in writing, the amount that you would pay to initiate a lawsuit against us in the appropriate court of your state. We agree to pay any additional fee or deposit required by the American Arbitration Association in excess of your filing fee. We also agree to pay the costs of the arbitration proceeding up to a maximum of one-half day (four hours) of hearings. Other fees, such as attorney's fees, expenses or travel to the arbitration and the costs of a proceeding that goes beyond one-half day will be with AAA rules. The arbitration will be held at a location within 100 miles of your residence unless you and we both agree to another location. To start the arbitration, you or we must do the following things:

- (i) Write a demand for arbitration. The demand must include a description of the Claim and the amount of damages sought to be recovered;
 - (ii) Send three copies of the demand for arbitration plus the appropriate filing fee to: American Arbitration Association, 601 Pennsylvania Avenue, N.W., Suite 700, Washington, D.C. 20004;
 - (iii) Send one copy of the demand for arbitration to XM SATELLITE RADIO INC. In the arbitration proceeding, the arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so. Otherwise, the arbitrator's decision is final and binding on all parties and may be enforced in any federal or state court that has jurisdiction. A court may sever any portion of this Section 9 that it finds to be unenforceable.
- c) Exceptions. Notwithstanding the foregoing:
- (i) any dispute over the validity of either party's intellectual property rights or our licenses to operate our business;
 - (ii) any Claim based on Section 9(b) above; and
 - (iii) any dispute involving a violation of the Communications Act of 1934, 47 U.S.C. §605, or the Electronic Communications Privacy Act, 18 U.S.C. §§2510-2521, may be decided only by a court of competent jurisdiction.

Nothing in this Agreement shall affect our ability to terminate your Service for non-payment of amounts owed to us when due. Furthermore, nothing in this Agreement will prevent us from bringing an action in a court of competent jurisdiction in order to collect any unpaid amounts.

10. MISCELLANEOUS

- a) Notice. Notices to you will be deemed given when deposited in the mail or on the date that an email is sent. Mailed notices may be included in our statements or emails to you. We may also provide notice to you by telephone, which will be deemed given when a mes-

sage is left with you or someone answering the telephone at your residence or commercial establishment. Your notices to us will be deemed given when we receive them at the address (regular or email) or telephone number set forth on the first page of this Agreement.

b) Applicable Law. The interpretation and enforcement of this Agreement shall be governed by the rules and regulations of the Federal Communications Commission, other applicable federal laws, and the laws of the state and local area where Service is provided to you. This Agreement is subject to modification if required by such laws. Notwithstanding the foregoing, Section 9 shall be governed by the Federal Arbitration Act.

c) Assignment of Account or Agreement. We may assign your account or this Agreement and all rights and/or obligations hereunder to any third party without notice for any purpose, including without limitation collection of unpaid amounts, in the event of an acquisition, corporate reorganization, merger or sale of substantially all of the party's assets to another entity. You hereby consent to such assignment. You must continue making all required payments to us in accordance with your billing statement, unless notified otherwise.

d) Other. This Agreement states our entire agreement. No salesperson or other representative is authorized to change it for you, although XM may modify it without prior notice to you (see Section 2). If any provision is declared by a competent authority to be invalid, that provision will be deleted or modified to the extent necessary, and the rest of this Agreement will remain enforceable. The specific terms of this Agreement that expressly or by their nature survive termination shall continue thereafter until fully performed.

THANK YOU FOR CHOOSING XM SATELLITE RADIO.

RADIO TO THE POWER OF X.®



SATELLITE
RADIO



CUSTOMER AGREEMENT

EXHIBIT 3

THIS AGREEMENT CONTAINS THE TERMS OF YOUR USE OF XM SATELLITE RADIO SERVICES. IF YOU DO NOT ACCEPT THESE TERMS, PLEASE NOTIFY US IMMEDIATELY AND WE WILL CANCEL YOUR SERVICE (OUR CONTACT INFORMATION IS LISTED BELOW). IF YOU DO NOT CANCEL YOUR SERVICE WITHIN 3 DAYS OF INITIATION OF YOUR SERVICE AND INSTEAD CONTINUE TO RECEIVE YOUR SERVICE, IT WILL MEAN THAT YOU ACCEPT THESE TERMS AND THAT THEY WILL BE LEGALLY BINDING ON YOU.

Thank you for choosing XM Satellite Radio ("XM"). XM broadcasts satellite radio programming only within the 48 contiguous United States. To become an XM subscriber, you must be at least 18 years old. If you are not yet 18 years old, you may still use XM, but only if the account was created by your parent or guardian. This is your copy of the XM Satellite Radio Customer Agreement. Please keep it for your records.

CONTACTING XM SATELLITE RADIO:

You may contact us between the hours of 6:00 am and 12:00 pm Eastern Standard Time Monday through Saturday and 8:00 am and 8:00 pm Eastern Standard Time, Sunday, by calling **1-800-XM-RADIO** (1-800-967-2346), or by writing to:

XM Satellite Radio Inc.
Attention: Listener Care
1500 Eckington Place, N.E.
Washington, D.C. 20002
 Listener Care Center email address: listenercare@xmradio.com
 Website address: www.xmradio.com

1. OUR SERVICE

a) Programming. The Service consists of (i) 100 channels of music, news, talk, sports, children's and other entertainment, as well as certain premium channels available for an additional fee, (ii) 21 channels of traffic and weather in 2004, and (iii) certain data-related services. XM reserves the right to change programming at any time and without notice, at our sole discretion, including canceling, moving or adding particular channels, with or without notice to you. If you are dissatisfied with the modified programming, you may terminate your service with notice to XM as outlined in Section 6. Premium channels are only available in commercial establishments at XM's discretion.

b) Use Limitations. You may not reproduce, rebroadcast, or otherwise transmit the programming, create unauthorized recordings of the programming, charge admission specifically for the purpose of listening to the programming, or distribute play lists of the Service. Notwithstanding the provisions of Section 9, we or any of our programming partners may prosecute violations of the foregoing against you and other responsible parties in any court of competent jurisdiction, under the rules and regulations of the FCC, and other applicable laws. Subscription to the Service does not grant you the right to use any of our or our partners' trademarks.

c) User Safety. If you use the Service it is your responsibility to exercise prudent discretion and observe all safety measures required by law and your own common sense. You assume the entire risk related to your use of the Service. XM assumes no responsibility for accidents

resulting from or associated with use of the Service. Your Service includes traffic and weather information, and you acknowledge that such information is not for "safety for life", but is merely supplemental and advisory in nature, and therefore cannot be relied upon as safety-critical in connection with any aircraft, sea craft or automobile usage. This information is provided "as is" and XM disclaims any and all warranties, express and implied, with respect thereto or the transmission or reception thereof. XM further does not warrant the accuracy, reliability, completeness or timeliness of the traffic and weather information disclosed on the Service. In no event will XM, its data suppliers, service providers or hardware manufacturers be liable to you or to any third party for any direct, indirect, incidental, consequential, special, exemplary or punitive damages or lost profits resulting from use of or interruptions in the transmission or reception of the Service.

d) Stock Ticker Usage (only applicable with certain XM receivers). Certain stock quote data on the Service is the intellectual property of the relevant provider or third parties that provide such data to the relevant provider. All data is delayed by approximately 25 minutes. The data is protected by copyright and other intellectual property laws and all ownership rights remain with the relevant information service provider. All stock quotes with 4 or 5 character symbols are NASDAQ traded companies.

You may only use stock quotes retrieved from the Service for your own personal and non-commercial purposes. You may not sell or otherwise make any stock quotes available to anyone else. You bear all risk from any use or results of using any stock quotes.

Transmission of stock quotes may be subject to arbitrary delays beyond our control. Neither XM nor any stock quote provider warrants the accuracy, reliability, completeness or timeliness of the stock quote data. You acknowledge that neither any information service provider will be liable to you or any third party for any losses arising from such delay. In no event will any information provider or XM be liable to you for any loss or special, incidental, consequential, direct or indirect damages resulting from delay or loss of stock quotes on the Service.

e) Channel Blocking. Some programming may include explicit language. Channels with a high frequency of explicit language are indicated on your channel line-up and on the channel display with an "XL." It is your responsibility to impose listening restrictions that you consider appropriate on others. Please contact our Listener Care Center 1-800-XM-RADIO (1-800-967-2346), or visit our website xmradio.com for information on channel blocking.

f) Commercial Subscribers.

1. In addition to the other terms of this Agreement, this paragraph applies if you use the Service in a commercial establishment. Channels with a high frequency of explicit language are indicated on your channel line-up and on the channel display with an "XL." These channels may not be appropriate for the patrons of a commercial establishment. If you use the Service in a commercial establishment, you must inform us promptly of any complaints you receive from any patron about the content of our Service. It is your responsibility to impose listening restrictions that you consider appropriate on others and for your

patrons. Please contact our Listener Care Center **1-888-689-2300** or visit our website **xmradio.com** for information on channel blocking. We reserve the right to block any channels from a commercial establishment based on listener complaints, FCC inquiry, negative publicity, or similar factors.

2. If you use XM in a commercial establishment, you are not responsible for the payment of any copyright royalties to ASCAP, BMI, SESAC or for any sound recordings, as these are included in your subscription fee, unless you operate an establishment that charges an admissions fee (e.g. a theme park, skating rink, dance club, etc.), in which case you are responsible for payment of any copyright royalties to ASCAP, BMI, SESAC or for any sound recordings. Our subscription fees and other charges and fees are subject to change. Please do not include comments or questions with your payment. If paying against invoices, mail all payments to the following address:

XM Satellite Radio Inc.
P. O. Box 79500
Baltimore, MD 21279-0500

2. CHANGE IN TERMS.

Due to the evolving nature of our business, its competition, and the requirement and costs of programming suppliers, we reserve the right to change the terms on which we offer the Service from time to time, as we believe appropriate, including the fees and charges. If we make any such changes, we will send you a notice describing them and their effective date, in the manner described in Section 10(a), or we will send you an entirely new Agreement to replace this Agreement. You always have the right to cancel the Service at any time if these terms are not acceptable to you. If you elect not to cancel your Service after receiving our notice of a change, your continued receipt of Service from us will constitute acceptance of the changed terms. If you notify us that you do not accept such terms, then we may cancel your Service as provided in Section 6.

3. SERVICE INTERRUPTIONS.

Service may be unavailable or interrupted from time to time for a variety of reasons, such as environmental or topographic conditions and other things we can't control. Service might also not be available in certain places (e.g., in tunnels, parking garages, or within or next to buildings) or near other technologies. Home, portable and office-based receivers function best when the antenna is placed in or near a south-facing window with a clear view of the sky. Even if your antenna is near a south-facing window, certain window treatments could interfere with reception. We are not responsible for any interruptions of Service that occur beyond our control.

4. RADIOS.

a) Authorized Suppliers. We do not make or install any of the equipment you may use to receive the Service ("XM Radios"). We only provide the Service. You must purchase your XM Radio, and any repairs, parts, installation or service for it, from authorized sellers or manufacturers. We are not liable for any damage to your vehicle or home

resulting from installation of any XM Radio. We do not warrant any XM Radios in any way whatsoever and are not responsible for the advertising, statements, practices, promises, services or warranties of such sellers or manufacturers. If you have any complaints about your Radio or your installation, you should direct them to your authorized seller, manufacturer or installer. Returns of XM Radios are subject to your authorized seller's or manufacturer's return policy.

b) Multiple XM Radios. If you add additional XM Radios to your account, you must purchase a separate subscription for each one (see Section 5). Such additional subscriptions may be eligible for reduced rates, which may be offered by XM from time to time.

c) Loss of Radio. You should report to XM and cancel your subscription if your XM Radio is lost, stolen, sold, transferred or otherwise removed from your possession without your permission. Otherwise you will continue to pay for the Service.

d) Technology. It is prohibited to copy, decompile, disassemble, reverse engineer or manipulate any technology incorporated in receivers compatible with the XM Satellite Radio system. Furthermore, the AMBE® voice compression software included in this product is protected by intellectual property rights including patent rights, copyrights, and trade secrets of Digital Voice Systems, Inc. The music, talk, news, entertainment, data, and other content on the Service is protected by copyright and other intellectual property laws and all ownership rights remain with the respective data service provider. You are prohibited from any export of the data (or derivative thereof) except in compliance with applicable export laws, rules and regulations. The user of this or any other software contained in an XM Radio is explicitly prohibited from attempting to copy, decompile, reverse engineer, or disassemble the object code, or in any other way convert the object code into human-readable form. The software is licensed solely for use within this product.

5. PAYMENT.

In return for receiving our Service, you agree to pay us as follows:

a) Subscription Fee. You will pay in advance, preferably by credit card, at the applicable consumer or commercial rates in effect at the time of payment, for any Service ordered for use with your XM Radio (including Service ordered by your children or other family members), with or without your permission, through all periods until the Service is canceled. You will be responsible for all subscription fees, other charges and fees and purchases under your account. Our subscription fees and other charges and fees are subject to change. Please do not include comments or questions with your payment. If paying against invoices, mail all payments to the following address:

XM Satellite Radio Inc.
P. O. Box 79500
Baltimore, MD 21279-0500

b) Billing Statements. If you elect to make automatic credit or charge card (i.e., Visa, MasterCard, American Express) or electronic funds payments, you will not receive monthly statements unless you request them. Statements are sent via electronic mail unless otherwise

requested. Statements will show:

- (1) payments, credits, purchases, and any other charges to your account;
- (2) the amount you owe us; and
- (3) the payment due date.

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1. *Activation Fee*: For each XM Radio on your account, we may charge you a fee to activate, upgrade or modify your XM Satellite Radio service. The addition of premium channels may require an additional transaction fee. The fee is payable with your first subscription fee payment.
2. *Late Fee*: If we do not receive your payment by the billing due date we may charge you a late fee of up to \$5.00 per month or partial month until the delinquent amount is paid in full, subject to applicable law. We do not extend credit to customers and this late fee is not an interest charge. This fee is reasonably related to the actual expense we incur due to late payment and may be subject to limitations set forth by law in your state.
3. *Deposits*: If you wish to reactivate your Service after a deactivation for non-payment, you must pay your account in full and we may require a deposit before we reactivate your Service. Deposits will appear on your bills as credits, from which we will deduct our charges. Deposits will not earn interest.
4. *Returned Payment Fee*: If any bank or other financial institution refuses to honor any payment of yours, we may charge you a collection fee that is the lesser of (i) \$20.00 (\$15.00 for residents of West Virginia); and (ii) the maximum amount permitted under applicable law. You acknowledge that this collection fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature and it is reasonably related to the actual expense we incur due to unsatisfied payment.
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- Your name and account number;
- The dollar amount in question; and
- The details of your question.

Please do not include any payment with your correspondence. If you wish to dispute any charge, you must contact XM within 30 days after the date you receive the statement in question (see Section 9 "Resolving Disputes" for how to notify XM that you are disputing a charge): OTHERWISE YOU WAIVE YOUR RIGHT TO DISPUTE THE CHARGE. Undisputed portions of the statement must be paid by the due date to avoid a late fee and possible deactivation of the Service.

e) Payments. You must pay in U.S. dollars, by check, money order, electronic funds transfer, or credit card. Please make checks payable to XM Satellite Radio Inc. We reserve the right to require payment via cashier's check or money order regardless of credit rating or any past practice. The outstanding balance is due in full each payment period. We may, in our discretion, accept partial payments, which will be applied to the oldest outstanding statement. No "payment in full" notation or other restrictive endorsement written on your payments will restrict our ability to collect all amounts owing to us.

f) If You Don't Pay On Time. We expect you to pay your account balance on time. If you don't pay your account balance on time, we may deactivate your Service after any applicable grace period. If you purchased an annual subscription to any Service and your account is past due, we may convert your subscription to a quarterly or monthly subscription. If so, we will prorate your subscription and amounts owed to us and will apply your pre-payments to past due amounts and any remaining credit to future obligations.

g) Consents Regarding Credit. In order to establish an account with us, you authorize us to inquire into your creditworthiness, by checking with credit reporting agencies. If you are delinquent in any payment to us, you also authorize us to report any late payment or non-payment to credit reporting agencies.

h) Change of Address or Credit or Charge Card Information. You must notify us immediately of any change in your name, mailing address, residence address, email address, telephone number or credit or charge card information.

i) Taxes. You will pay all taxes or other government fees and charges, if any, which are assessed based on your use of the Service and the billing address you provide to XM.

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a) Term. The term of this Agreement is indefinite and Service will continue until canceled.

b) Your Cancellation. You may cancel Service by notifying us. This notice will become effective at the end of your billing cycle. You are responsible for payment of all outstanding balances accrued through that effective date. We (or the creditor or lessor of your vehicle, if your Subscription Fee is included in the amount financed or leased) will refund amounts you may have prepaid on a quarterly, annual or multi-year basis representing those months beyond the billing cycle month during which you cancelled your service. Fees attributable to certain promotional offerings or Service received during trial periods may not be refunded. Service credits will not be refunded in cash, but will be honored in the form of Service for the remaining length of the credit.

c) Our Cancellation. We may cancel your Service at any time if you fail to pay amounts owing to us when due, subject to any grace periods, breach of any other material provision of this Agreement or for any other reason. In such case, you will still be responsible for payment of all outstanding balances accrued through that effective date. You must comply with all of the terms and conditions of this entire Customer Agreement or we may cancel your Service.

7. CUSTOMER LIST.

You acknowledge and agree that we will have the right to make portions of our customer list available to carefully selected third parties that we believe offer products and services that may be of interest to you. However, if you prefer that we not provide your information to third parties, please contact us at **1-800-XM-RADIO** (1-800-967-2346). Notwithstanding the foregoing, we reserve the right to inform ASCAP, BMI, SESAC, and any other music royalty collection organization of your subscription for the purposes of confirming to them that you are not responsible for the payment of music royalties.

8. LIMITS ON OUR RESPONSIBILITY

a) DISCLAIMERS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE SERVICE OR YOUR XM RADIO. ALL SUCH WARRANTIES OR REPRESENTATIONS (INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT) ARE HEREBY DISCLAIMED.

b) LIMITATIONS OF LIABILITY. WE ARE NOT RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOSSES RELATING TO THE USE OR PURCHASE OF ANY XM RADIO OR THE SERVICE, WHETHER BASED ON NEGLIGENCE OR OTHERWISE. OUR TOTAL LIABILITY TO YOU AND ANY OTHER PERSONS RECEIVING OUR SERVICE, REGARDLESS OF THE CAUSE, WILL IN NO EVENT EXCEED THE AMOUNTS THAT YOU HAVE PAID TO US FOR THE SERVICE THAT YOU RECEIVED DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE SPECIFIC EVENT THAT GAVE RISE TO THE APPLICABLE DAMAGE OR LOSS. THIS ALLOCATION OF RISK IS REFLECTED IN OUR PRICES. YOU MAY HAVE GREATER RIGHTS THAN DESCRIBED ABOVE UNDER YOUR STATE'S LAWS.

9. RESOLVING DISPUTES.

In order to expedite and control the cost of disputes, you agree that any legal or equitable claim relating to this Agreement, or the Service (referred to as a "Claim") will be resolved as follows:

a) Informal Resolution. We will first try to resolve any Claim informally. Accordingly, neither of us may start a formal proceeding (except for Claims described in Section 9(c)) for at least 60 days after one of us notifies the other of a Claim in writing. To initiate a claim, you must send notice to the address on the first page of this Agreement. If XM initiates a claim, we will send our notice to the billing address on file with us.

b) Formal Resolution. Except as provided in Section 9(c), if we cannot resolve a Claim informally, any Claim either of us asserts will be resolved only by binding arbitration. The arbitration will be conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules") that are in effect at the time the arbitration is initiated and under the rules set forth in this Agreement. If there is a conflict between the AAA Rules and the rules set forth in this Agreement, the rules set forth in this Agreement will govern. ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JURY TRIAL. If you initiate an arbitration, you agree to pay a fee of \$125 or, if less and you tell us in writing, the amount that you would pay to initiate a lawsuit against us in the appropriate court of your state. We agree to pay any additional fee or deposit required by the American Arbitration Association in excess of your filing fee. We also agree to pay the costs of the arbitration proceeding up to a maximum of one-half day (four hours) of hearings. Other fees, such as attorney's fees, expenses or travel to the arbitration and the costs of a proceeding that goes beyond one-half day will be with AAA rules. The arbitration will be held at a location within 100 miles of your residence unless you and we both agree to another location. To start the arbitration, you or we must do the following things:

- (i) Write a demand for arbitration. The demand must include a description of the Claim and the amount of damages sought to be recovered;
 - (ii) Send three copies of the demand for arbitration plus the appropriate filing fee to: American Arbitration Association, 601 Pennsylvania Avenue, N.W., Suite 700, Washington, D.C. 20004;
 - (iii) Send one copy of the demand for arbitration to XM SATELLITE RADIO INC. In the arbitration proceeding, the arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so. Otherwise, the arbitrator's decision is final and binding on all parties and may be enforced in any federal or state court that has jurisdiction. A court may sever any portion of this Section 9 that it finds to be unenforceable.
- c) Exceptions. Notwithstanding the foregoing:
- (i) any dispute over the validity of either party's intellectual property rights or our licenses to operate our business;
 - (ii) any Claim based on Section 9(b) above; and
 - (iii) any dispute involving a violation of the Communications Act of 1934, 47 U.S.C. §605, or the Electronic Communications Privacy Act, 18 U.S.C. §§2510-2521, may be decided only by a court of competent jurisdiction.

Nothing in this Agreement shall affect our ability to terminate your Service for non-payment of amounts owed to us when due. Furthermore, nothing in this Agreement will prevent us from bringing an action in a court of competent jurisdiction in order to collect any unpaid amounts.

10. MISCELLANEOUS

- a) Notice. Notices to you will be deemed given when deposited in the

mail or on the date that an email is sent. Mailed notices may be included in our statements or emails to you. We may also provide notice to you by telephone, which will be deemed given when a message is left with you or someone answering the telephone at your residence or commercial establishment. Your notices to us will be deemed given when we receive them at the address (regular or email) or telephone number set forth on the first page of this Agreement.

b) Applicable Law. The interpretation and enforcement of this Agreement shall be governed by the rules and regulations of the Federal Communications Commission, other applicable federal laws, and the laws of the state and local area where Service is provided to you. This Agreement is subject to modification if required by such laws. Notwithstanding the foregoing, Section 9 shall be governed by the Federal Arbitration Act.

c) Assignment of Account or Agreement. We may assign your account or this Agreement and all rights and/or obligations hereunder to any third party without notice for any purpose, including without limitation collection of unpaid amounts, in the event of an acquisition, corporate reorganization, merger or sale of substantially all of the party's assets to another entity. You hereby consent to such assignment. You must continue making all required payments to us in accordance with your billing statement, unless notified otherwise.

d) Other. This Agreement states our entire agreement. No salesperson or other representative is authorized to change it for you, although XM may modify it without prior notice to you (see Section 2). If any provision is declared by a competent authority to be invalid, that provision will be deleted or modified to the extent necessary, and the rest of this Agreement will remain enforceable. The specific terms of this Agreement that expressly or by their nature survive termination shall continue thereafter until fully performed.

THANK YOU FOR CHOOSING XM SATELLITE RADIO.





CUSTOMER AGREEMENT

EXHIBIT 4

THIS AGREEMENT CONTAINS THE TERMS OF YOUR USE OF XM SATELLITE RADIO AND XM RADIO ONLINE. IF YOU DO NOT ACCEPT THESE TERMS, PLEASE NOTIFY US IMMEDIATELY AND WE WILL CANCEL YOUR SERVICES (OUR CONTACT INFORMATION IS LISTED BELOW). IF YOU DO NOT CANCEL YOUR SERVICES WITHIN 3 DAYS OF INITIATION OF YOUR SERVICES AND INSTEAD CONTINUE TO RECEIVE YOUR SERVICES, IT WILL MEAN THAT YOU ACCEPT THESE TERMS AND THAT THEY WILL BE LEGALLY BINDING ON YOU.

Thank you for choosing XM Satellite Radio ("XM"). XM broadcasts satellite radio programming only within the 48 contiguous United States. To become an XM subscriber, you must be at least 18 years old. If you are not yet 18 years old, you may still use XM, but only if the account was created by your parent or guardian. This is your copy of the XM Satellite Radio Customer Agreement. Please keep it for your records.

CONTACTING XM SATELLITE RADIO:

You may contact us between the hours of 6:00 am and 2:00 am Eastern Standard Time Monday through Saturday and 8:00 am and 8:00 pm Eastern Standard Time, Sunday, by calling 1-800-XM-RADIO (1-800-967-2346), or by writing to:

XM Satellite Radio Inc.
1500 Eckington Place, N.E.
Washington, D.C. 20002

Online support:
listenercare@xmradio.com

1. OUR SERVICE

a) Programming.

The Satellite Radio Service ("Radio Service") consists of (i) over 150 channels of music, news, talk, sports, children's and other entertainment, (ii) 21 channels of traffic and weather in 2005, and (iii) certain data-related services. XM Radio Online ("Online Service" and collectively with Radio Service, the "Services") consists of all commercial-free Radio Service music channels, plus additional and exclusive Online Service programming. XM reserves the right to change programming at any time and without notice, at our sole discretion, including canceling, moving or adding particular channels, with or without notice to you. If you are dissatisfied with the modified programming, you may terminate your service with notice to XM as outlined in Section 8. Not all content offered on XM's Radio Service is available using the Online Service, and some content may have been modified for broadcast on the Online Service.

b) Recommended System Requirements for Online Service.

XM Radio Online is available to both PC and Mac users. Different system configurations will yield different results. We recommend the following system configurations:

PC:

Internet Connection: Broadband
Processor: Pentium III 1 GHz
Memory: Minimum 256 MB RAM, minimum 64 MB Video RAM
Operating System: Windows XP
Sound: Soundcard w/ speakers or headphones
Additional Software: Windows Media Player 10, Flash 7
Browser Compatibility: Internet Explorer 6+, Firefox 1.0+, Netscape 7+ (Opera not supported); cookies must be enabled

Mac:

Internet Connection: Broadband
Processor: G4
Memory: 256 MB RAM, 64 MB Video RAM
Operating System: OS X
Sound: Soundcard w/ speakers or headphones
Additional Software: Windows Media Player 9, Flash 7
Browser Compatibility: Firefox 1.0+ (Internet Explorer not supported); cookies must be enabled

c) Use Limitations.

You may not reproduce, rebroadcast, or otherwise transmit the programming, create unauthorized recordings of the programming, charge admission specifically for the purpose of listening to the programming, or distribute play lists of the Services. Notwithstanding the provisions of Section 11, we or any of our programming partners may prosecute violations of the foregoing against you and other responsible parties in any court of competent jurisdiction, under the rules and regulations of the FCC, and other applicable laws. Subscription to the Services does not grant you the right to use any of our or our partners' trademarks. You also may not attempt to override or circumvent any of the usage rules, limitations, or security measures embedded into the Online Service. Only one concurrent login is permitted at any one time. You may login to the Online Service from any compatible Web Device (as defined below), but not from more than one Web Device at any one time. XM will hold you fully liable for all claims and losses resulting from your use or misuse of the Online Service.

d) International Use Limitations.

To be a subscriber, you must possess a physical address in the United States of America. Subscribers may choose to access the Online Service internationally, but such use is not guaranteed by XM, and is limited to web browser access and any applicable local laws, regulations, or rules regarding the use of Web Devices, the Internet and the Online Service.

e) User Safety.

If you use the Services it is your responsibility to exercise prudent discretion and observe all safety measures required by law and your own common sense. You assume the entire risk related to your use of the Services. XM assumes no responsibility for accidents resulting from or associated with use of the Services. Your Radio Service includes traffic and weather information, and you acknowledge that such information is not for "safety for life", but is merely supplemental and advisory in nature, and therefore cannot be relied upon as safety-critical in connection with any aircraft, sea craft or automobile usage. This information is provided "as is" and XM disclaims any and all warranties, express and implied, with respect thereto or the transmission or reception thereof. XM further does not warrant the accuracy, reliability, completeness or timeliness of the traffic and weather information disclosed on the Radio Service. In no event will XM, its data suppliers, service providers, marketing/distribution, software or internet partners or hardware manufacturers be liable to you or to any third party for any direct, indirect, incidental, consequential, special, exemplary or punitive damages or lost profits resulting from use of or interruptions in the transmission or reception of the Services.

f) Stock Ticker Usage (only applicable with certain XM receivers).

Certain stock quote data on the Radio Service is the intellectual property of the relevant provider or third parties that provide such data to the relevant provider. All data is delayed



by approximately 25 minutes. The data is protected by copyright and other intellectual property laws and all ownership rights remain with the relevant information service provider. All stock quotes with 4 or 5 character symbols are NASDAQ traded companies.

You may only use stock quotes retrieved from the Radio Service for your own personal and non-commercial purposes. You may not sell or otherwise make any stock quotes available to anyone else. You bear all risk from any use or results of using any stock quotes.

Transmission of stock quotes may be subject to arbitrary delays beyond our control. Neither XM nor any stock quote provider warrants the accuracy, reliability, completeness or timeliness of the stock quote data. You acknowledge that the information service provider will not be liable to you or any third party for any losses arising from such delay. In no event will any information provider or XM be liable to you for any loss or special, incidental, consequential, direct or indirect damages resulting from delay or loss of stock quotes on the Radio Service.

g) Channel Blocking and Monitoring.

Some programming may include explicit language. Channels with a high frequency of explicit language are indicated on your channel line-up and on the channel display with an "XL." It is your responsibility to impose listening restrictions that you consider appropriate on others. Please contact our Listener Care Center 1-800-XM-RADIO (1-800-967-2346), or visit our website XMRADIO.com for information on channel blocking. The Online Service is designed to appeal to a broad audience, and some programming may include explicit language. Channel blocking is not available with the Online Service; therefore it is your responsibility to impose listening restrictions that you consider appropriate on others.

h) Commercial Subscribers (Radio Service only).

1. In addition to the other terms of this Agreement, this paragraph applies if you use the Radio Service in a commercial establishment. Channels with a high frequency of explicit language are indicated on your channel line-up and on the channel display with an "XL." These channels may not be appropriate for the patrons of a commercial establishment. If you use the Radio Service in a commercial establishment, you must inform us promptly of any complaints you receive from any patron about the content of our Radio Service. It is your responsibility to impose listening restrictions that you consider appropriate on others and for your patrons. Please contact our Listener Care Center 1-888-689-2300 or visit our website XMRADIO.com for information on channel blocking. We reserve the right to block any channels from a commercial establishment based on listener complaints, FCC inquiry, negative publicity, or similar factors.

2. If you use only XM's Radio Service in a commercial establishment, you are not responsible for the payment of any copyright royalties to ASCAP, BMI, SESAC or for any sound recordings, as these are included in your subscription fee, unless you operate an establishment that charges an admissions or membership fee (e.g. a theme park, skating rink, dance club, health club, etc.) or use music sources other than XM's Services (e.g. CDs, DJs, live music or terrestrial radio, etc.), in which case you are responsible for payment of any copyright royalties to ASCAP, BMI, SESAC or for any sound recordings. Our subscription fees and other charges and fees are subject to change. Please do not include comments or questions with your payment. If paying against invoices, mail

all payments to the following address:

XM Satellite Radio Inc.
P. O. Box 830205
Baltimore, MD 21283-0205

i) Commercial Use Prohibited (Online Service only).

The Online Service is not intended for public use. It is intended for private use and enjoyment, and you are not permitted to use the Online Service for broadcast in a commercial establishment.

2. CHANGE IN TERMS.

Due to the evolving nature of our business, its competition, and the requirement and costs of programming suppliers, we reserve the right to change the terms on which we offer the Services from time to time, as we believe appropriate, including the fees and charges. If we make any such changes, we will send you a notice describing them and their effective date, in the manner described in Section 12(a), or we will send you an entirely new Agreement to replace this Agreement. You always have the right to cancel the Services at any time if these terms are not acceptable to you. If you elect not to cancel your Services after receiving our notice of a change, your continued receipt of Services from us will constitute acceptance of the changed terms. If you notify us that you do not accept such terms, then we may cancel your Services as provided in Section 8.

3. RADIO SERVICE INTERRUPTIONS.

Radio Service may be unavailable or interrupted from time to time for a variety of reasons, such as environmental or topographic conditions and other things we can't control. Radio Service might also not be available in certain places (e.g., in tunnels, parking garages, or within or next to buildings) or near other technologies. Home, portable and office-based receivers function best when the antenna is placed in or near a south-facing window with a clear view of the sky. Even if your antenna is near a south-facing window, certain window treatments could interfere with reception. We are not responsible for any interruptions of Radio Service that occur beyond our control.

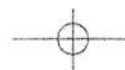
4. ONLINE SERVICE INTERRUPTIONS.

Online Service availability may be limited or unavailable based on unavailability or difficulties with the Internet generally or your web browser, computer, home wiring, or Internet service provider and other things beyond our control. The Online Service is available at speeds of either 32 kbps or 64 kbps and functions best when streamed over a broadband connection. We do not guarantee continuous, uninterrupted or secure access to the Online Service and operation of the Online Service may be interfered with by numerous factors outside of our control.

5. RADIOS.

a) Authorized Suppliers.

We do not make or install any of the equipment you may use to receive the Radio Service ("XM Radios"). We only provide the Radio Service. You must purchase your XM Radio, and any repairs, parts, installation or service for it, from authorized sellers or manufacturers. We are not liable for any damage to your vehicle or home resulting from installation of any XM Radio. We do not warrant any XM Radios in any way whatsoever and are not responsible for the advertising,



statements, practices, promises, services or warranties of such sellers or manufacturers. If you have any complaints about your XM Radio or your installation, you should direct them to your authorized seller, manufacturer or installer. Returns of XM Radios are subject to your authorized seller's or manufacturer's return policy.

b) Multiple XM Radios.

If you add additional XM Radios to your account, you must purchase a separate subscription for each one (see Section 7). Such additional subscriptions may be eligible for reduced rates, which may be offered by XM from time to time, and a per radio activation fee may apply.

c) Loss of Radio.

You should report to XM and cancel your subscription if your XM Radio is lost, stolen, sold, transferred or otherwise removed from your possession without your permission. Otherwise you will continue to pay for the Services.

d) Technology.

It is prohibited to copy, decompile, disassemble, reverse engineer or manipulate any technology incorporated in receivers compatible with the XM Satellite Radio system. Furthermore, the AMBE (r) voice compression software included in this product is protected by intellectual property rights including patent rights, copyrights, and trade secrets of Digital Voice Systems, Inc. The music, talk, news, entertainment, data, and other content on the Services is protected by copyright and other intellectual property laws and all ownership rights remain with the respective data service provider. You are prohibited from any export of the data (or derivative thereof) except in compliance with applicable export laws, rules and regulations. The user of this or any other software contained in an XM Radio is explicitly prohibited from attempting to copy, decompile, reverse engineer, or disassemble the object code, or in any other way convert the object code into human-readable form. The software is licensed solely for use within this product.

6. ONLINE SERVICE EQUIPMENT.

a) XM does not make or install any of the physical equipment, Internet connectivity or web browser software you may use to receive the Online Service ("Web Devices"). We only provide the Online Service. You must purchase your computer, laptop, alternate web device, modem or router, and Internet service, from appropriate sellers or manufacturers. XM is not liable for any damage to your Web Devices resulting from use of the Online Service. XM does not warrant any Web Devices in any way whatsoever and we are not responsible for the advertising, statements, practices, promises, services or warranties of such sellers or manufacturers. If you have any complaints about your Web Devices, you should direct them to the applicable seller, reseller, manufacturer, or service provider.

b) Login and Password.

Once your Online Service registration has been processed you are responsible for maintaining the confidentiality of your Confirmation Code, Email Address and Password. You are also fully responsible for all activities that occur in connection with your Login ID. At the end of each online session, you must completely log out of the Online Service. Also, should your Login ID or Password be lost, stolen, sold, transferred or otherwise removed from your possession without your permission, contact XM immediately so that your Login ID and Password may be deactivated and reissued. To report

compromised Login ID information contact:

Internet Service Support
XM Satellite Radio Inc.
1500 Eckington Place, NE
Washington, DC 20002

Online support:
http://listen.xmradio.com/xstream/xmro_contact.jsp

c) Technology.

It is prohibited to copy, decompile, disassemble, reverse engineer, hack, manipulate, or otherwise make available any technology incorporated in receivers compatible with the XM Satellite Radio System or that support the XM website, the Online Service or any of its content. Furthermore, the AMBE (r) voice compression software included in this product is protected by intellectual property rights including patent rights, copyrights, and trade secrets of Digital Voice Systems, Inc. You also agree not to upload, post, transmit or otherwise make available any material that contains software viruses or any other computer code, files, or programs designed to interrupt, disable or limit the functionality of the XM website or the Online Service. Furthermore, the music, talk, news entertainment, data and other content on the Services are protected by copyright and other intellectual property laws and all ownership rights remain with the respective content and data service providers. You are prohibited from any export of the data (or derivative thereof) except in compliance with applicable export laws, rules and regulations. The user of this or any other software contained in an XM Radio or the XM website and all software used in connection with either is explicitly prohibited from attempting to copy, decompile, reverse engineer, or disassemble the object code, or in any other way convert the object code into human-readable form. The software is licensed solely for use within this product.

7. PAYMENT.

In return for receiving our Services, you agree to pay us as follows:

a) Subscription Fee.

You will pay in advance, preferably by credit card, at the applicable consumer or commercial rates in effect at the time of payment, for any Services ordered for use with your XM Radio (including Services ordered by your children or other family members), with or without your permission, through all periods until the Services are canceled. You will be responsible for all subscription fees, other charges and fees and purchases under your account. Our subscription fees and other charges and fees are subject to change. Please do not include comments or questions with your payment. If paying against invoices, mail all payments to the following address:

XM Satellite Radio Inc.
P. O. Box 830205
Baltimore, MD 21283-0205

b) Billing Statements.

If you elect to make automatic credit or charge card (i.e., Visa, MasterCard, American Express) or electronic funds payments, you will not receive monthly statements unless you request them. Statements are sent via electronic mail unless otherwise requested. Statements will show:

- (1) payments, credits, purchases, and any other charges to your account;
- (2) the amount you owe us; and
- (3) the payment due date.

If you are not using an electronic method of payment, we will send you a statement for the print billing payment cycle period available when subscribing. Statements are not sent with a zero or nominal balance due, or a nominal credit balance, on your account at the end of a billing cycle.

c) Administrative Fees.

In order to minimize our monthly subscription fees, we may charge you one or more of the following fees, all of which are subject to change:

1. Activation Fee: For each XM Radio on your account, we may charge you a fee to activate, upgrade or modify your Radio Services. The fee is payable with your first subscription fee payment.
2. Late Fee: If we do not receive your payment by the billing due date we may charge you a late fee of up to \$5.00 per month or partial month until the delinquent amount is paid in full, subject to applicable law. We do not extend credit to customers and this late fee is not an interest charge. This fee is reasonably related to the actual expense we incur due to late payment and may be subject to limitations set forth by law in your state.
3. Deposits: If you wish to reactivate your Services after a deactivation for non-payment, you must pay your account in full and we may require a deposit before we reactivate your Services. Deposits will appear on your bills as credits, from which we will deduct our charges. Deposits will not earn interest.
4. Returned Payment Fee: If any bank or other financial institution refuses to honor any payment of yours, we may charge you a collection fee that is the lesser of (i) \$20.00 (\$15.00 for residents of West Virginia); and (ii) the maximum amount permitted under applicable law. You acknowledge that this collection fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature and it is reasonably related to the actual expense we incur due to unsatisfied payment.
5. Invoice Fee: If you elect to receive a paper copy of your invoice, we may charge you a fee of up to \$2.00 per invoice.

d) Questions About Your Statement.

If you have a question about your Services or bill, or if you would like to change or reactivate your Services, call us at 1-800-XM-RADIO (1-800-967-2346), or write to listenercare@xmradio.com or regular mail at the address on the first page. We will respond to you as promptly as we can. If you write to us, please include the following information:

- * Your name and XM account number;
- * The dollar amount in question; and
- * The details of your question.

Please do not include any payment with your correspondence. If you wish to dispute any charge, you must contact XM within 30 days after the date you receive the statement in question (see Section 11 "Resolving Disputes" for how to notify XM that you are disputing a charge): OTHERWISE YOU WAIVE YOUR RIGHT TO DISPUTE THE CHARGE. Undisputed portions of the statement must be paid by the due date to avoid a late fee and possible deactivation of the Services.

e) Payments.

You must pay in U.S. dollars, by check, money order, electronic funds transfer, or credit card. Please make checks payable to XM Satellite Radio Inc. We reserve the right to require payment via cashier's check or money order regardless of credit rating or any past practice. The outstanding balance is due in full each payment period. We may, in our discretion,

accept partial payments, which will be applied to the oldest outstanding statement. No "payment in full" notation or other restrictive endorsement written on your payments will restrict our ability to collect all amounts owing to us.

f) If You Don't Pay On Time.

We expect you to pay your account balance on time. If you don't pay your account balance on time, we may deactivate your Services after any applicable grace period. If you purchased an annual or multi-year subscription to any Services and your account is past due, we may convert your subscription to a quarterly or monthly subscription. If so, we will prorate your subscription and amounts owed to us and will apply your pre-payments to past due amounts and any remaining credit to future obligations.

g) Consents Regarding Credit.

In order to establish an account with us, you authorize us to inquire into your creditworthiness, by checking with credit reporting agencies. If you are delinquent in any payment to us, you also authorize us to report any late payment or nonpayment to credit reporting agencies.

h) Change of Address or Credit or Charge Card Information.

You must notify us immediately of any change in your name, mailing address, residence address, e-mail address, telephone number or credit or charge card information.

i) Taxes.

You will pay all taxes or other government fees and charges, if any, which are assessed based on your use of the Services and the billing address you provide to XM.

8. CANCELLATION

a) Term.

The term of this Agreement is indefinite and Services will continue until canceled.

b) Your Cancellation.

You may cancel Services by notifying us. This notice will become effective at the end of your billing cycle. You are responsible for payment of all outstanding balances accrued through that effective date. We (or the creditor or lessor of your vehicle, if your Subscription Fee is included in the amount financed or leased) will refund amounts you may have prepaid on a quarterly, annual or multi-year basis representing those months beyond the billing cycle month during which you cancelled your service. Fees attributable to certain promotional offerings or Services received during trial periods may not be refunded. Service credits will not be refunded in cash, but will be honored in the form of Services for the remaining length of the credit.

c) Our Cancellation.

We may cancel your Services at any time if you fail to pay amounts owing to us when due, subject to any grace periods, for breach of any other material provision of this Agreement or for any other reason. In such case, you will still be responsible for payment of all outstanding balances accrued through that effective date. You must comply with all of the terms and conditions of this entire Customer Agreement or we may cancel your Services.



9. COLLECTION OF INFORMATION.

XM may collect personal information about your use of the Services that helps us customize our Services. XM will use your information to (i) provide and improve Services, (ii) enforce the Customer Agreement, (iii) offer you new products and services and (iv) perform market research for our own purposes. You acknowledge and agree that we will have the right to make portions of our customer list and your information available to carefully selected third parties that we believe offer products and services that may be of interest to you. However, if you prefer that we not provide your information to third parties, please contact us at 1-800-XM-RADIO (1-800-967-2346) or at legal@xmradio.com. Notwithstanding the foregoing, we reserve the right to inform ASCAP, BMI, SESAC, and any other music royalty collection organization of your subscription for the purposes of confirming to them that you are not responsible for the payment of music royalties if your establishment is using only XM Services.

10. LIMITS ON OUR RESPONSIBILITY

a) DISCLAIMERS.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE RADIO SERVICE OR YOUR XM RADIO. YOUR USE OF THE ONLINE SERVICE IS AT YOUR SOLE RISK. THE CONTENT AND FUNCTIONALITY OF THE ONLINE SERVICE IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. ALL SUCH WARRANTIES OR REPRESENTATIONS (INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT) ARE HEREBY DISCLAIMED.

b) LIMITATIONS OF LIABILITY.

WE ARE NOT RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOSSES RELATING TO THE USE OR PURCHASE OF ANY XM RADIO OR ANY WEB DEVICE, THE RADIO SERVICE OR THE ONLINE SERVICE, WHETHER BASED ON NEGLIGENCE OR OTHERWISE. OUR TOTAL LIABILITY TO YOU AND ANY OTHER PERSONS RECEIVING OUR SERVICES, REGARDLESS OF THE CAUSE, WILL IN NO EVENT EXCEED THE AMOUNTS THAT YOU HAVE PAID TO US FOR THE SERVICE THAT YOU RECEIVED DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE SPECIFIC EVENT THAT GAVE RISE TO THE APPLICABLE DAMAGE OR LOSS. THIS ALLOCATION OF RISK IS REFLECTED IN OUR PRICES. YOU MAY HAVE GREATER RIGHTS THAN DESCRIBED ABOVE UNDER YOUR STATE'S LAWS.

c) You agree to defend, indemnify and hold harmless XM from and against any claims arising out of your use of the Services and any breach by you of this Agreement. This indemnification obligation includes the acts or omissions of anyone accessing the Online Service using your Login ID, with or without your permission.

11. RESOLVING DISPUTES.

In order to expedite and control the cost of disputes, you agree that any legal or equitable claim relating to this Agreement, or the Services (referred to as a "Claim") will be resolved as follows:

a) Informal Resolution.

We will first try to resolve any Claim informally. Accordingly, neither of us may start a formal proceeding (except for Claims described in Section 11(c)) for at least 60 days after one of us notifies the other of a Claim in writing. To initiate a claim, you must send notice to the address on the first page of this Agreement. If XM initiates a claim, we will send our notice to the billing address on file with us.

b) Formal Resolution.

Except as provided in Section 11(c), if we cannot resolve a Claim informally, any Claim either of us asserts will be resolved only by binding arbitration. The arbitration will be conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules") that are in effect at the time the arbitration is initiated and under the rules set forth in this Agreement. If there is a conflict between the AAA Rules and the rules set forth in this Agreement, the rules set forth in this Agreement will govern. ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JURY TRIAL. If you initiate an arbitration, you agree to pay a fee of \$125 or, if less and you tell us in writing, the amount that you would pay to initiate a lawsuit against us in the appropriate court of your state. We agree to pay any additional fee or deposit required by the American Arbitration Association in excess of your filing fee. We also agree to pay the costs of the arbitration proceeding up to a maximum of one-half day (four hours) of hearings. Other fees, such as attorney's fees, expenses or travel to the arbitration and the costs of a proceeding that goes beyond one-half day will be with AAA rules. The arbitration will be held at a location within 100 miles of your residence unless you and we both agree to another location. To start the arbitration, you or we must do the following things:

- (i) Write a demand for arbitration. The demand must include a description of the Claim and the amount of damages sought to be recovered;
- (ii) Send three copies of the demand for arbitration plus the appropriate filing fee to: American Arbitration Association, 601 Pennsylvania Avenue, N.W., Suite 700, Washington, D.C. 20004;
- (iii) Send one copy of the demand for arbitration to XM SATELLITE RADIO INC. In the arbitration proceeding, the arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so. Otherwise, the arbitrator's decision is final and binding on all parties and may be enforced in any federal or state court that has jurisdiction. A court may sever any portion of this Section 11 that it finds to be unenforceable.

c) Exceptions.

Notwithstanding the foregoing:

- (i) any dispute over the validity of either party's intellectual property rights or our licenses to operate our business;
- (ii) any Claim based on Section 11(b) above; and
- (iii) any dispute involving a violation of the Communications Act of 1934, 47 U.S.C. §605, or the Electronic Communications Privacy Act, 18 U.S.C. §§2510-2521, may be decided only by a court of competent jurisdiction.

Nothing in this Agreement shall affect our ability to terminate your Services for non-payment of amounts owed to us when due. Furthermore, nothing in this Agreement will prevent us from bringing an action in a court of competent jurisdiction in order to collect any unpaid amounts.



12. MISCELLANEOUS**a) Notice.**

Notices to you will be deemed given when deposited in the mail or on the date that an e-mail is sent. Mailed notices may be included in our statements or emails to you. We may also provide notice to you by telephone, which will be deemed given when a message is left with you or someone answering the telephone at your residence or commercial establishment. Your notices to us will be deemed given when we receive them at the address (regular or e-mail) or telephone number set forth on the first page of this Agreement.

b) Applicable Law.

The interpretation and enforcement of this Agreement shall be governed by the rules and regulations of the Federal Communications Commission, other applicable federal laws, and the laws of the state and local area where Service is provided to you. This Agreement is subject to modification if required by such laws. Notwithstanding the foregoing, Section 11 shall be governed by the Federal Arbitration Act.

c) Assignment of Account or Agreement.

We may assign your account or this Agreement and all rights and/or obligations hereunder to any third party without notice for any purpose, including without limitation collection of unpaid amounts, in the event of an acquisition, corporate reorganization, merger or sale of substantially all of the party's assets to another entity. You hereby consent to such assignment. You must continue making all required payments to us in accordance with your billing statement, unless notified otherwise.

d) Other.

This Agreement states our entire agreement. No salesperson or other representative is authorized to change it for you, although XM may modify it without prior notice to you (see Section 2). If any provision is declared by a competent authority to be invalid, that provision will be deleted or modified to the extent necessary, and the rest of this Agreement will remain enforceable. The specific terms of this Agreement that expressly or by their nature survive termination shall continue thereafter until fully performed.

THANK YOU FOR CHOOSING XM SATELLITE RADIO.



CUSTOMER AGREEMENT



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xmradioT&C.04R1

EXHIBIT 5

United States Postal Service

Postage Statement – First-Class Mail and Priority Mail

Use this form for either First-Class Mail or Priority Mail. They may not be combined.

Post Office: Note Mail Arrival Date & Time

Mailer

Permit Holder's Name and Address and Email Address, If Any

EU Services
649 N Horners Ln
Rockville, MD 20850

Telephone

Name and Address of Mailing Agent (if other than permit holder)

EU Services
649 N Horners Lane
Rockville, MD 20850

Telephone

(301) 424-3300

Name and Address of Individual or Organization for Which Mailing is Prepared (if other than permit holder) 57291

XM SATELLITE RADIO
1500 Eckington PI NE
Washington, DC 20002-2194CAPS Cust. Ref. No.
Customer No.

Customer No.

Customer No.

Mailing

Post Office of Mailing ROCKVILLE MD 20850

Processing Category

☒ Letters☐ Flats☐ Automation Flats☐ Parcels

Mailing Date

3/24/2008

Federal Agency Cost Code

Statement Seq. No.

0000144948

Type of Postage
☒ Permit Imprint
☐ Precanceled Stamps
☐ Metered

Weight of a Single Piece

0.0344 pounds

Total Pieces

176,925

Permit #

800

For Mail Enclosed Within Another Class

☐ Standard Mail☐ Bound Printed Matter☐ Library Mail☐ Media Mail☐ Periodicals☐ Parcel Post

Total Weight

6,086.2200 lb

For Automation Rate Pieces, Enter Date of Address Matching and Coding

11

Receipt Number

Reference Number

Mailer's Department/Job No.

60341-2

Description of Mail
Credit Mailing

Destination

Parts Completed (select all that apply)

☒ A ☒ B ☐ C ☐ D ☐ S**Total Postage** (Add parts totals)

\$59,684.6920

Rate at Which Postage Affixed (Check one)

☐ Correct☐ Lowest☐ Neither

pcs. x \$

= Postage Affixed**Net Postage Due** (Subtract postage affixed from total postage)

\$59,684.69

For USPS Use Only: Additional Postage Payment (State reason)

For postage affixed add additional payments to net postage due;
for permit imprint add additional payment to total postage.**Total Adjusted Postage Affixed**

Permit Imprint Only - Check One

☐ AIC 121 (First-Class Mail)

PM: Report Total Postage in AIC:

☐ AIC 237 (Priority Mail)**Total Adjusted Postage Permit Imprint**

Certification

The mailer's signature certifies acceptance of liability for and agreement to pay any revenue deficiencies assessed on this mailing, subject to appeal. If an agent signs this form, the agent certifies that he or she is authorized to sign on behalf of the mailer and that the mailer is bound by the certification and agrees to pay any deficiencies. In addition, agents may be liable for any deficiencies resulting from matters within their responsibility, knowledge, or control. The mailer hereby certifies that all information furnished on this form is accurate, truthful, and complete; that the mail and the supporting documentation comply with all postal standards and the mailing qualifies for the rates and fees claimed; and that the mailing does not contain any matter prohibited by law or postal regulation. I understand that anyone who furnishes false or misleading information on this form or who omits information requested on this form may be subject to criminal and/or civil penalties, including fines and imprisonment.

Signature of Mailer or Agent

Privacy Notice: For information regarding our Privacy Policy visit www.usps.com

Printed Name of Mailer or Agent Signing Form

Patricia Steen

Telephone

(301) 424-3300

USPS Use Only

Weight of a Single Piece

0.0344

Pound

Are postage figures at left adjusted from mailer's entries? If yes, reason:

☐ Yes ☐ No

Total Pieces

176,925

Total Weight

6,086.22

Total Postage

59,684.69

Presort Verification Performed? (Check One)

☐ Yes☐ No

I CERTIFY that this mailing has been inspected concerning: (1) eligibility for postage rates claimed; (2) proper preparation (and presort where required); (3) proper completion of postage statement; and (4) payment of annual fee (if required).

Date Mailer Notified

Contact

By (Initials)

Verifying Employee's Signature

Verifying Employee's Name

Time

AM

PM

Round Stamp (Required)



United States Postal Service

Postage Statement – First-Class Mail

Attachment Page: 2

60341-2 Date: 3/24/2008
Credit Mailing Control No.: 144948

Receipt Number:

☒ **Part A**

Automation Rates

Check box at left if rates are populated in this section.

Letters	Rate	No. of Pieces	Total
A6 3-Digit	0.3340	X 130,130 =	43,463.4200
A7 AADC	0.3410	X 35,350 =	12,054.3500
A8 Mixed AADC	0.3600	X 7,851 =	2,826.3600
Part A Total			58,344.1300

☒ **Part B**

Nonautomation Rates

Check box at left if rates are populated in this section.

Letters	Rate	No. of Pieces	Total
B3 Presorted	0.3730	X 3,594 =	1,340.5620
Part B Total			1,340.5620

Containers	1ft MM Trays	2ft MM Trays	2ft EMM Trays	Flat Trays	Sacks	Other
Non-Palletized:	337	238				
Palletized:						
	Pallets:	Total Trays:	575	Total Sacks:		